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August 1, 2002

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: Petition for Forbearance of Iowa Telecommunications Services, Inc.  
d/b/a Iowa Telecom, CC Docket No. 01-331**

Dear Ms. Dortch:

Pursuant to Section 0.459(a) of the Commission's rules,<sup>1</sup> Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom ("Iowa Telecom") hereby requests confidential treatment of certain proprietary commercial and financial information contained in exhibits to the attached ex parte letter submitted by Iowa Telecom on August 1, 2002 ("August 1 ex parte"). Iowa Telecom specifically requests confidential treatment for the competitively sensitive commercial and financial information in attachments 2, 3, 4, and 6 to Exhibit A, and in Exhibits B and C to the August 1 ex parte. If the Commission finds, for any reason, that it cannot maintain the confidentiality of the proprietary information in these exhibits, because the information is voluntarily provided, Iowa Telecom requests that the Commission return the attached confidential documents to Iowa Telecom pursuant to Section 0.459(e) of the Commission's rules.<sup>2</sup>

Iowa Telecom is submitting a public version of the August 1 ex parte that excludes attachments 2, 3, 4, and 6 to Exhibit A in their entirety, and includes redacted versions of Exhibits B and C.<sup>3</sup> The company has no objection to the public disclosure of the nonproprietary information contained in the public version of the August 1 ex parte and the exhibits thereto.

<sup>1</sup> 47 C.F.R. § 0.459(a).

<sup>2</sup> *Id.* § 0.459(e).

<sup>3</sup> The redacted versions of Exhibits B and C mask only material that should not be released to the public.

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The information that has been redacted from Exhibits A, B, and C is proprietary commercial and financial information that is routinely withheld from public disclosure. Under Section 0.459 of the Commission's rules, parties whose confidential information is submitted to the Commission are permitted to file a request that the information not be disclosed to the public. If that information is withholdable by the agency pursuant to an exemption of the Freedom of Information Act ("FOIA"),<sup>4</sup> the Commission's rules require that the information remain confidential unless the Commission identifies a "compelling public interest in disclosure."<sup>5</sup>

Exemption 4 of FOIA exempts "commercial or financial information obtained from a person" that is "confidential" from public disclosure under FOIA.<sup>6</sup> Where the information is provided to the Government voluntarily, Exemption 4 protects as confidential any commercial or financial information that is "of a kind that would not customarily be released to the public by the person from whom it was obtained."<sup>7</sup>

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<sup>4</sup> 5 U.S.C. § 522(b)(4).

<sup>5</sup> Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816 ¶ 8 (1998) ("*Confidential Treatment Order*"). Even in those rare circumstances, the Commission "'insists upon a showing that the information is a necessary link in a chain of evidence' that will resolve an issue before the Commission" before authorizing release of any information. *Id.* (quoting Classical Radio for Connecticut, Inc. and WTIC-FM Listeners' Guild on Request for Inspection of Records, FOIA Control No. 8-74, Memorandum Opinion and Order, 69 FCC 2d 1517 ¶ 8 n.4 (1978)).

<sup>6</sup> 5 U.S.C. § 552(b)(4).

<sup>7</sup> *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 879 (D.C. Cir. 1992) ("*Critical Mass*"); see also *Confidential Treatment Order*, 13 FCC Rcd 24816 ¶ 4. In *Critical Mass*, the court recognized that "[i]t is a matter of common sense that the disclosure of information the Government has secured from voluntary sources on a confidential basis will both jeopardize its continuing ability to secure such data on a cooperative basis and injure the provider's interest in preventing its unauthorized release." *Critical Mass*, 975 F.2d at 879.

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The information for which Iowa Telecom requests confidential treatment is contained in exhibits A, B, and C of the attached August 1 ex parte. More specifically, Iowa Telecom seeks confidential treatment of attachments 2, 3, 4, and 6 to Exhibit A, and selected portions of Exhibits B and C. Exhibits A and B contain extensive information regarding the future infrastructure investments that the company intends to make under its 2002 Network Improvement Plan. This information is clearly commercial in nature. Moreover, the material within these exhibits for which Iowa Telecom is requesting confidential treatment is of a kind that is customarily not released to the public, and therefore falls under FOIA Exemption 4. Iowa Telecom filed Exhibits A and B with the Iowa Utilities Board in a pending ratemaking proceeding,<sup>8</sup> and requested and received confidential treatment of this same information in that proceeding. Iowa Telecom requests that the Commission provide the same level of protection to this same data in this current proceeding.

With regard to Exhibit C, Iowa Telecom is requesting confidential treatment of parenthetical explanations that convey information contained in attachments 2, 3, and 4 of Exhibit A. This information, like the information in attachments 2, 3, and 4, is commercial information of a kind that is customarily not released to the public and, therefore, is exempt from public disclosure under FOIA Exemption 4.

Moreover, all of the information for which Iowa Telecom is seeking confidential treatment would be extremely beneficial to Iowa Telecom's actual and potential competitors. Approximately twenty competitive local exchange carriers ("CLECs") have commenced operation within the company's service territory and are presently competing against Iowa Telecom. Iowa Telecom would therefore suffer substantial competitive harm if the confidential commercial or financial information contained in the exhibits to the August 1 ex parte were to be released to the public.

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<sup>8</sup> *In Re: Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom*, Docket No. RPU-02-4.

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Furthermore, Commission precedent has found this type of information to be competitively sensitive and withholdable under Exemption 4.<sup>9</sup>

For all the foregoing reasons, Iowa Telecom requests that the Commission withhold from public disclosure the proprietary commercial and financial information contained in attachments 2, 3, 4, and 6 of Exhibit A and in Exhibits B and C to the August 1 ex parte, pursuant to Section 0.459 of the Commission's rules.

Sincerely,

Handwritten signature of Gregory J. Vogt in cursive script, with the initials "by DA" written at the end.

Gregory J. Vogt  
Counsel for Iowa Telecommunications  
Services, Inc. d/b/a Iowa Telecom

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<sup>9</sup> See, e.g., Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport; CC Docket No. 94-97, Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Application for Review, Transmittal No. 2524, Order, 13 FCC Rcd 13615 ¶ 5 (1998) (concluding that data providing "details of investments [and] capital costs" fall under FOIA Exemption 4 because they "provide insight into [a company's] business strategies" and "could be used by competitors to devise strategies to introduce new services to the competitor's benefit"); Mercury PCS II, LLC on Request for Inspection of Records, Omnipoint Corporation on Request for Confidential Treatment of Documents, FOIA Control No. 98-85, Memorandum Opinion and Order, 15 FCC Rcd 14559 ¶ 12 (2000) (affirming that an exhibit containing information on a company's "strategic plan and business strategy" are protected under FOIA Exemption 4).